

2000

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-214582.2

DATE: June 19, 1984

MATTER OF: ModuForm, Inc.

DIGEST:

1. Since a valid offer must contain or make reference to price, quantity, quality, and delivery terms and clearly demonstrate the offeror's intent to be bound contractually, a protester's contention that it substantially complied with a requirement to submit a proposal for a multiple-award schedule contract is denied where it appears that pre-closing date communications with the contracting officer were merely preliminary discussions concerning items to be included on the schedule contract and the protester's intent in acknowledging a solicitation amendment is unclear.
2. The fact that the protester's product may be unique does not entitle the protester to an award of a Federal Supply Schedule contract or mean that the provisions of a solicitation regarding the timely submission of proposals should be waived.

ModuForm, Inc. requests reconsideration of our decision, ModuForm, Inc., B-214582, April 12, 1984, 84-1 CPD ¶ 414, in which we summarily denied ModuForm's protest of its failure to receive General Services Administration (GSA) solicitation No. FNP-A6-1574-N. We affirm our prior decision.

The solicitation sought offers leading to the award of multiple-award Federal Supply Schedule contracts for upholstered furniture. ModuForm, an incumbent under an existing schedule contract, said in the original protest that when it received an amendment to the solicitation it read the amendment as applying to its existing contract.

The protester said it signed the amendment and returned it to GSA, but did not submit a proposal for a new schedule contract. The protester, who had been discussing with GSA the details of adding new items to its contract, learned of its misunderstanding when the contracting officer inquired of the firm why it had not submitted a proposal prior to the closing date. The protester complained to this Office that its failure to submit a proposal was due, at least in part, to its failure to receive a copy of the new solicitation. We denied the protest because ModuForm did not allege or show that the agency intended to prevent it from submitting a proposal.

In requesting reconsideration, the protester does not take issue with our treatment of its failure to receive a copy of the solicitation; rather, the protester argues that we failed to address its contentions that GSA should consider ModuForm for a new schedule contract because the firm substantially complied with the requirement to submit a proposal and because its furniture is unique.

The protester's contention that it substantially complied with the requirement to submit a proposal for a new schedule contract is based on the protester having signed and returned an amendment to the solicitation and on its verbal communications with the contracting officer which the protester says constituted its "offer." The protester says these circumstances demonstrate its intent to be bound contractually and argues that its failure to submit a formal written proposal thus should be waived as a minor informality.

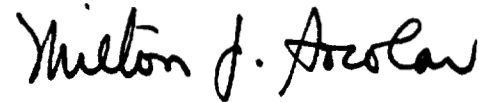
A basic principle of contract formation is that an offer must be sufficiently definite and must clearly demonstrate the offeror's intent to form a binding agreement. See Best Western Quantico Inn/Conference Center; Cliffside Inn, B-209500 et al., Feb. 17, 1983, 83-1 CPD ¶ 164. An offer should contain, or at least make sufficient reference to, the price, quantity, quality, and delivery terms by which the parties will be bound under any resultant contract. In this case, there is no indication that the protester's communications with the contracting officer provided for any of these terms. Rather, it

appears from the protester's submissions that the parties merely engaged in preliminary discussions concerning items to be included in the next year's schedule contract. In addition, although the protester contends that its acknowledgment of the amendment evidenced its intent to be bound by the terms of the solicitation, we note that the protester originally said it signed the amendment believing it related only to its existing contract. Thus, its intent to be bound by the terms of the new solicitation is far from clear. Under these circumstances, we find the protester's contention that it substantially complied with the requirement for submitting a proposal for a new schedule contract to be without merit. See Communicology, Inc., B-190218, Nov. 23, 1977, 77-2 CPD ¶ 407.

The protester also argues that our prior decision did not take proper account of the fact that the protester's furniture is unique. Basically, the protester contends that the needs of agencies ordering from the schedule will not be served adequately because no other vendor can supply furniture with the special features that the protester's furniture has.

This issue is also without merit. Even assuming the protester's furniture is unique, this does not entitle the protester to a new schedule contract or mean that GSA should waive the requirements of the solicitation regarding the timely submission of proposals. In any event, should a user agency determine that items listed on a schedule do not meet its minimum needs, the agency is free to look elsewhere for items that do. Thus, the protester will not be deprived of an opportunity to compete for awards even though its furniture may not be listed on a schedule.

We affirm our prior decision.


for Comptroller General
of the United States